No. 82-1346

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

PACIFIC GAS AND ELECTRIC COMPANY, et al.,
Petitioners,

vs.

FEDERAL ENERGY REGULATORY COMMISSION, et al.,
Respondents.

Petition For A Writ of Certiorari To The United States Court of Appeals For The Eleventh Circuit

[redacted] **BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS**

FLOYD R. B. VIAU
COUNTY COUNSEL

JAMES B. WATERMAN
ASSISTANT COUNTY COUNSEL
and COUNSEL OF RECORD
JEFFREY L. KUHN
DEPUTY COUNTY COUNSEL
COUNTY OF FRESNO
2220 Tulare Street, Suite 121-P
Fresno, California 93721
Telephone: (209) 488-3479
Attorneys for Amicus Curiae County of Fresno

BOWNE OF SAN FRANCISCO, INC. • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2500

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

Cases

Statutes

No. 82-1346

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

PACIFIC GAS AND ELECTRIC COMPANY, et al.,
Petitioners,

vs.

FEDERAL ENERGY REGULATORY COMMISSION, et al.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

MOTION OF THE COUNTY OF FRESNO, CALIFORNIA FOR LEAVE TO FILE BRIEF AMICUS CURIAE, AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITIONERS

Fresno County respectfully moves this Court for leave to file the accompanying brief amicus curiae in support of Petitioners' position in this case.

STATEMENT OF INTEREST

Fresno County, California, is located in and extends across California's great Central Valley and up into the Sierra Nevada mountains. The Pacific Gas and Electric Company (PGandE) supplies electric power to citizens, cities, businesses and farms throughout Fresno County and much of the rest of northern and central California.

PGandE is a widely held public utility company regulated by the California Public Utilities Commission. PGandE and its predecessors have served Fresno County since nearly the turn of the century.

Agriculture is Fresno County's primary industry. In 1982 over $1.9 billion worth of agricultural commodities were produced on County farms and ranches, making Fresno County the #1 agricultural producing county in the entire nation. Because the San Joaquin Valley is semi-arid, agriculture has long depended heavily on pumping to produce water for irrigation. The electric power provided by PGandE has made that pumping possible and with it the growth and prosperity of this County and its citizens. The City of Fresno, our county seat, has grown to become one of California's major cities. It was built on the County's agricultural base and the industry that has grown to supplement it. All of this growth has been heavily dependent on reliable and economical power from PGandE. Our County's future industrial growth and the employment opportunities such growth represents is even more dependent upon this reliable and affordable power.

Four of PGandE's federally licensed hydroelectric projects are located in Fresno County. One of them, the Haas-Kings River Project (FERC 1988) is even now involved in relicensing and is being sought by various outside "municipal" systems claiming a "preference" based on the Federal Energy Regulatory Commission ("Commission") decision at issue in this case. The benefits of those projects flow to Fresno County and its residents along with all of PGandE's other customers. All of PGandE's customers are financially at risk if the Commis-

sion's decision to implement a "preference" against them is put into effect.

SUBSTANCE OF THE BRIEF AMICUS CURIAE

1. The Commission and the Court of Appeals ignored the Act's goal of benefitting the public served by PGandE and other original licensees.

2. The language of the Act provides no municipal preference against a project's original licensee on relicensing.

3. The Commission and the Court erred in exalting what is, at best, an ambiguous "history" over the terms employed in the Act and in employing materials having no place in legitimate "legislative history".

REASONS FOR GRANTING THIS MOTION

Utility fuels costs must be passed on to the consumer. In California such costs are virtually a direct pass-through, with fuel costs now accounting for over half the typical electric bill. By the same token, any facility that can produce power without burning fossil fuel, like PGandE's licensed hydroelectric projects, directly benefits the company's customers. That has always been the primary advantage of hydro power. Any attack on PGandE's hydroelectric facilities is an attack on Fresno County and its citizens. The Federal Power Act was designed to promote the development of the nation's water resources by providing the maximum safety and security for private investment consistent with the public interest. Fresno County represents a critical element in that public interest, the public served by a company which took up the Federal

Power Act's invitation and developed its hydroelectric system under federal license.

This is a case of enormous importance to the people who pay power bills throughout the United States. Fresno County submits that those who represent the consuming public threatened by the Commission's decision (affirmed by the United States Court of Appeals for the Eleventh Circuit) should be heard in assessing the importance and the merits of this case and, on that basis, Fresno County respectfully requests permission to file this *amicus curiae* brief.

Respectfully submitted,

FLOYD R. B. VIAU
COUNTY COUNSEL

JAMES B. WATERMAN
ASSISTANT COUNTY COUNSEL
and COUNSEL OF RECORD
JEFFREY L. KUHN
DEPUTY COUNTY COUNSEL
COUNTY OF FRESNO
2220 Tulare Street, Suite 121-P
Fresno, California 93721
Telephone: (209) 488-3479
Attorneys for Amicus Curiae County of Fresno

By .....
JAMES B. WATERMAN

No. 82-1346

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

PACIFIC GAS AND ELECTRIC COMPANY, et al.,
Petitioners,

vs.

FEDERAL ENERGY REGULATORY COMMISSION, et al.,
Respondents.

Petition For A Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

BRIEF OF AMICUS CURIAE COUNTY OF FRESNO, CALIFORNIA

STATEMENT OF THE CASE

The Pacific Gas and Electric Company (PGandE) filed a Petition for Writ of Certiorari (No. 82-1346) on February 10, 1983 seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in *Alabama Power Company, et al. v. Federal Energy Regulatory Commission,* 658 F.2d 1311 (11th Cir. 1982). Petitions relating to that decision have also been filed by other regulated public utility companies owning and operating licensed hydroelectric plants. (Petitions Nos. 82-1312, 82-1345). The Court of Appeals' decision upheld a Federal Energy Regulatory Commission (Commission) opinion to the effect that Part I of the Federal Power Act contains

a "preference" for municipally-run utility systems that runs against an hydroelectric project's original licensee and its customers when the project comes up for relicensing. Opinion 88, 11 FERC (CCH) ¶ 61,337.

INTEREST OF THE COUNTY OF FRESNO AND SUMMARY OF ARGUMENT

Fresno County's interest in this case is detailed in the preceding motion requesting leave to file this brief.

This brief points out that the interpretation advanced by the Commission and the Court of Appeals in this case totally ignores and runs directly counter to the Federal Power Act's plain intention to benefit and protect the public served by those developing and operating hydroelectric projects under federal license. It goes on to review the direct and straight-forward way in which the Act, on it face, excludes original licensees and their customers from the application of any "municipal preference" on relicensing. Finally, the brief examines the extraordinary way in which both the Commission and the Court misemployed "history" in this case to rewrite the terms of the Act.

ARGUMENT

I

THE COURT OF APPEAL ERRED IN FAILING TO CONSIDER THE PUBLIC SERVED BY LICENSEES LIKE PGandE AND THE ACT'S PLAIN INTENTION TO BENEFIT THAT PUBLIC

Part I of the Federal Power Act (16 U.S.C. §§ 791a-823) was enacted as the Federal Water Power Act in 1920. Its primary purpose was the encouragement of private investment in developing the water power potential of

the nation's water resources. *Chemehuevi Tribe of Indians v. FPC*, 420 U.S. 395, 407-08 (1975); Cf. *FPC v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 251 (1954). The Act simultaneously provided that its licensees would be subject to sound regulation at either the state or federal level (See 16 U.S.C. §§ 812, 813), thus assuring that the benefits of hydroelectric power would indeed be passed on to the public they served.

In California and throughout the West the creation of a system designed to encourage and protect investment was essential, given the vast amounts of land still in federal hands. It was hoped that developers would come forward, would dedicate their projects to the service of the public they served, and, together, investors and customers would go forward to fully develop and utilize hydroelectric power in the public interest.

In California that is precisely what has happened. Without the power provided by PGandE much of Fresno County would be barely habitable; with that power our land has been abundant and our cities have thrived. Indeed, Fresno County has become the most productive agricultural area, not only in California, but in the entire nation.

With the Act's central goal and hoped-for result in mind, it would be strange indeed to find the Act's framers seeking to punish original licensees and their customers by awarding a "preference" on relicensing to someone else. Fresno County submits that the language of the Federal Power Act, read directly, will admit of no such strange result. Fresno County further submits that before the Act can be turned against the very people it was designed to protect and encourage, this Court must assure itself that such a

result is, in fact, compelled by the language and "logic" cited by the Commission in reaching that result.

The Federal Power Act deals with an issue central to the just operation of our federal system, that is, the way in which the federal government's control over public lands and navigable waters will be employed to benefit the public. The public served by those companies which incurred the risk and expense of creating the developments envisioned by the Act, is the public the Act sought to benefit through encouragement of such investment. The notion that under those circumstances Congress would have desired to create a relicensing preference *against* that public is extraordinary. Yet, neither the Commission nor the Court of Appeals considered that point at all.

Indeed the Court of Appeals seems to have been completely unaware of the scope of the case before it. The relicensing of PGandE's Mokelumne River Project (FERC 137) was one of (and by far the larger of) the two cases on which FERC founded its decision to decide this matter on a general basis. The Commission's decision, of course, was premised on the creation of a principle to be applied in all relicensing cases. The case before the Court of Appeals, in short, was to affect *every* licensed project in the country. Yet the Court of Appeals talks only of one project belonging to Utah Power and Light Company. PGandE Petition Appendix 5a ("Pet. App."). California is never mentioned; its interests are dismissed by reference to "another municipality that also sought a declaration of preference." *Id.* Nothing whatever was said, and quite plainly no consideration was given, to the position of the millions of public utility company customers throughout the country,

against whom the Commission and the Court were engaged in setting up a "preference." The Court of Appeals' decision to abstain from an independent analysis of the Act, in "great deference" to the Commission's action, must not prevent the review of a case so important to the functioning of the Federal Power Act and to the consuming public the Act was designed to benefit.

A concrete example will illustrate the potential effect of the Commission's decision on Fresno County and its residents. Our County and its residents currently enjoy the benefit of relatively low-cost electricity produced by the Haas-Kings project located on the Kings River in eastern Fresno County. They also enjoy the benefit of favorable water use agreements and a cooperative spirit with PGandE. Fresno County residents have supported the construction, improvement and operation of this power plant as customers and as shareholders of PGandE.

The Haas-Kings project is now up for relicensing by the Commission (FERC 1988). Competing applications have been filed by the project's builder and original licensee PGandE and by a consortium of public agencies consisting of the Sacramento Municipal Utilities District, the Northern California Power Agency,[1] and five Southern California cities.[2] The consortium of public agencies is claiming the relicensing preference which is the subject of this case and thereby attempting to wrest control of Haas-Kings away from PGandE.

---

[1]Cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara and Ukiah and the Plumas-Sierra Electrical Cooperative.

[2]Cities of Anaheim, Azusa, Banning, Colton, and Riverside.

The importance of this to Fresno County and its residents is that the consortium is attempting to *divert* the low-cost power produced by Haas-Kings *away* from Fresno County and other PGandE customers for the exclusive benefit of their own customers. In short, the customers who have financially supported the project will lose continued benefits of low-cost power and cooperative water use agreements while residents of others areas of California, fewer in number, and far removed from this locale, people who have not expended a nickel on the project, will reap the benefits, all in the name of "municipal preference".

The practical consequences for Fresno County and its residents, as well as for all others similarly served by investor-owned utilities, are that they will face huge increases in electricity costs as PGandE loses a project that used no fuel and acts to replace the lost power. They will also face great uncertainty with respect to cooperative management and use of the water resources which make the project possible. As an alternative, Fresno County could be forced to form its own municipal utility agency to compete with and protect itself against outside "municipal" agencies such as the consortium. Fresno County has no interest presently in going into the electric utility and water management business and submits that it should not be placed in a position of being forced to do so in an effort to retain for its citizens the low-cost power and water use benefits of PGandE's Haas-Kings hydroelectric project.

Contrary to the position taken by the Commission and the Court of Appeals, we believe these potential effects of the Commission's opinion and the Court's decision are the

"absurd results" in this case. We submit that creating the potential for such discriminatory and illogical results frustrates the intent of Congress in adopting the Federal Water Power Act and is contrary to the broad public interest Congress intended be served.

II

THE LANGUAGE OF THE ACT PROVIDES NO MUNICIPAL PREFERENCE AGAINST A PROJECT'S ORIGINAL LICENSEE ON RELICENSING

The most puzzling aspect of this case is precisely how the Commission decided there was some confusion in the language of the Act. The Commission's arguments about "contexts of usage" and about words defined in contradistinction to one another necessarily including one another, are virtually incomprehensible. PGandE Pet. App. 59a-64a. The Court of Appeals added no explanation. It jumped over the "hurdle" of the Act's language just by deciding that the Commission's interpretation (itself not based on the Act's language at all) was "reasonable." PGandE Pet. App. 13a. All this in a case where the Act is neither complicated nor unclear!

The subject matter of this case is the relicensing of hydroelectric projects developed under federal license in situations where the federal government itself is not seeking to take over the project.

Section 15(a) of the Act (16 U.S.C. § 808(a)) deals with such relicensing situations. Logically enough, it first provides that:

> (1) ". . . the Commission is authorized [1] to issue a new license to the original licensee upon such terms and conditions as may be authorized. . . ."

Since the original licensee invested in the project as invited by the Act and developed the project in accordance with the Act, it is obvious that on relicensing the original licensee must occupy a specific position as the most likely recipient of a new license. The Act does, however, go on to describe another class of applicants who may be considered as alternative candidates for the project's license:

> ". . . *or* [2] to issue a new license under said terms and conditions to a *new licensee* . . . ."

Again, this second category of applicants is unexceptional. If the old licensee is unfit or unable or unwilling to go on, then the logical course is to choose someone else, a "new licensee." It is equally open to such strangers to the project to attempt to prove that they will better satisfy the Act's requirements for the comprehensive improvement and utilization of the resource. Cf. Section 10(a) (16 U.S.C. § 803(a)).

Against the structure of those relicensing provisions, the various municipally-run systems who initiated this case claimed that they were entitled to a "preference" against the original licensee and its customers.

But the section they rely upon says no such thing. Instead it confines the operation of any municipal preference on relicensing to apply only against "new licensees" as defined in Section 15 and not against the original licensee. Section 7(a) provides that preference is to be given to applications by states and municipalities:

> "[1] In issuing preliminary permits hereunder or [2] licenses where no preliminary permit has been issued and [3] in issuing licenses to *new licensees* under section 15 hereof . . . ." (16 U.S.C. § 800(a))

The words selected quite clearly exclude the original licensee. Section 15 makes this exclusion inevitable. The term "new licensee" is used three times in that section as a specific term of art describing those *other than the original licensee* who may receive a license. The same precise distinction is drawn in Section 22 and even in Section 7 itself, 16 U.S.C. § 815, 16 U.S.C. § 800(c).

Under any conventional, common sense system of statutory construction, the Act was plainly designed and written to exclude the original licensee from any operation of municipal preference on relicensing.

Fresno County submits that the logic of excluding the original licensee is manifest in the intent and structure of the Act. The Act was intended to encourage investment in and foster development of hydroelectric power projects. Assuring the investor a fair shake on relicensing was a minimal element in that program of encouragement. The Act was intended to advance the interests of those consuming the power produced in licensed projects. A proposal that some group of outside consumers would have preference over those for whom the project was built, and by whom the project was supported, would collide directly with the Act's primary purposes of rewarding investment, encouraging orderly development, and serving the broad public interest.

As a further element in the analysis of the language in question, it is only necessary to note that the exclusion of the original licensee from the municipal preference on *relicensing,* nicely replicates the exclusion of a private preliminary permit holder from the municipal preference on *initial licensing.* If the preliminary permit holder, with

a minimal investigatory investment, deserves such protection, protection for the original licensee and its customers, those who have invested everything that makes up the project, cannot be evaded.

Finally, we note that under the Commission's interpretation of section 7(a) the words "to new licensees" become superfluous and are effectively read out of the Act. This is contrary to the long-established rules that the legislature is presumed to have used no superfluous words in a statute, *Platt v. Union Pacific Railroad Co.* 99 U.S. 48 (1878), and every word of a statute must be given effect, if possible. *U.S. v. Gooding,* 25 U.S. (12 Wheat.) 460 (1827); *U.S. v. Menasche,* 348 U.S. 528 (1955). The Commission's and the Court of Appeals' failure to apply these elementary rules of statutory construction is mystifying.

The Commission, and even more plainly the Court of Appeals, ignored the language of the Act, its plain logic, and the established rules of statutory construction in making their tortured interpretations.

III

THE COMMISSION AND THE COURT ERRED IN EXALTING WHAT IS, AT BEST, AN AMBIGUOUS "HISTORY" OVER THE FACTS OF LEGISLATIVE USAGE AND IN EMPLOYING MATERIALS HAVING NO PLACE IN "LEGISLATIVE" HISTORY

Beyond the Court of Appeals' failure to review the Commission's overt avoidance of the Act's language, there is the questionable "historical" material on which both the Commission and the Court based their interpretations.

Statutes are written and enacted to be read and acted upon. That is the foundation of the rule that the words selected by Congress take precedence over *all* interpretative devices. *Cary v. Curtis*, 44 U.S. (3 How.) 236 (1845); *U.S. v. Temple* 105 U.S. 97 (1881); *Gemsco, Inc. v. Walling* 324 U.S. 244 (1945). The political process, by nature, is characterized by much speech making for effect, testimony for influence, and compromise for enactment. The more extended the struggle, the more necessary reliance on the words actually selected becomes, for it is only in those words that all the battles and bargains that went before are transformed into law. It is readily apparent that the process that produced the Federal Water Power Act was precisely the kind of extended effort that makes the language finally selected the only sure gauge of the agreement struck.

Turning their backs on these elementary facts of legislative analysis, the Commission and the Court of Appeals founded their interpretation on an "historical" review that contains all the ambiguity lacking in the Act itself.

The Commission's historical theory is that the words "in issuing licenses to new licensees under Section 15 hereof" were meaningless because, before they were added, a municipal preference "silently" applied to relicensing and the original licensee. PGandE Pet. App. 66a. This despite the fact that the quoted words are the *only* reference to relicensing in Section 7(a). The Commission's theory leads it to accuse the members of the House Committee considering the bill of "fail[ing] to realize" what was in the bill when they specifically described it as *not* containing any relicensing preference. PGandE Pet. App. 36a, n. 21. It

also required the Commission to complain that a Conference Committee "obscured" the bill by making clear its understanding that, prior to amendment, the municipal preference did not have any "silent" application to relicensing. PGandE Pet. App. 39a. The Commission caps its "silent" application theory by explaining away the fact that the words in question were added to extend the preference to apply against "new licensees" on relicensing, by agreeing that the Act's language before amendment "appeared" to have no application to relicensing. PGandE Pet. App. 39a.

The Commission's theory thus depends on acceptance of at least three points where the Commission must fight, in turn, with the history of committee analysis, the results of committee action, and the very language of the bill it cites. The Commission's decision is plainly premised, not on history, but on theory—a theory contradicted by the very history quoted to support it. Such a strained and internally ambiguous "history" cannot be used, as the Commission did here, to rewrite Congress' words. *Gemsco v. Walling*, 324 U.S. 244, 260 (1945).

Against the effort by the Commission to re-make history in the image of its own desired result, the unadorned facts of legislative usage presented by PGandE stand in stark contrast.

The question in this case is one of how words were used. PGandE's petition recounts the unchallenged evidence that the Congress which placed the words "new licensee under Section 15 hereof" in Section 7(a) consistently and repeatedly used and understood the words "new licensees" to describe a category that excluded the original licensee.

PGandE Petition, 14, 15. This is evidence, *on the record, of* what the words meant. The meaning of the words emerges directly from their use, and the facts of their use require no reliance on the "truth" of what the speaker was addressing or any attention whatever to his political motives, party, or bias. Fresno County submits that the Commission relied on nothing but hearsay, speculation and ambiguity; PGandE relies on the uncontroverted facts of actual usage. If there is to be any sound structure to the manner in which federal agencies and courts use legislative history, the course selected by the Commission and the Court of Appeals in this case must be corrected.

Even beyond the manifest error in the Commission's relying on its "silent" theory of legislative history while ignoring the actual facts of Congressional usage, there is the questionable employment, by both Commission and Court, of materials wholly *outside* the legislative history to now interpret and control the Act.

The Commission embarked on its search for the "silent preference" with a "memorandum", supposedly written by one O. C. Merrill, before any bill was introduced. PGandE Pet. App. 32a. There is no citation given for this "document." *Id.* It goes on to quote a "bill," itself never introduced, supposedly drafted by the same Mr. Merrill. PGandE Pet. App. 33a. It is on those items, neither of which ever figured in any way in the consideration of water power legislation by *Congress*, that the Commission builds its entire "historical" edifice. But where did these items, exalted by the Commission before the words of the Act itself, come from? The question becomes even more pressing as the Commission decision continues, for its pulls out

and cites even more "Merrill memoranda." PGandE App. 45a, 46a. These documents supposedly describe the Act after the words "in issuing licenses to new licensees under Section 15 hereof" were added. The decision does not pretend that their author had anything to do with the amendment, but his hearsay description of it is cited as authoritative. PGandE App. 45a. But the essential question remains unanswered, where are these supposed pieces of "legislative history" coming from? Rather than answer that question, the Commission compounds the problem by also citing private correspondence between one Gifford Pinchot and a Senator Jones, again with no source. PGandE Pet. App. 42a and 43a.

The Court of Appeals, surprisingly, is of no help whatever in answering these questions. It repeats the Commission's use of those materials (PGandE Pet. App. 10a, 12a) but cites as their source only "reprinted in City of Bountiful, Utah" [The Commission Decision]. The answer to these questions comes only from the petitioners:

> "Petitioners first learned of the existence of the Merrill and Pinchot writings when the Commission retrieved them from files and used them in this case and petitioners obtained copies only pursuant to a 'freedom of information' request." PGandE Petition 21, fn. 31.

Fresno County submits that this is an absolutely intolerable abuse of the process of statutory interpretation. The laws of the land, including the Federal Power Act, are widely printed and readily accessible to all who would follow and rely upon them. As soon as efforts are made to go beyond the language as enacted and into its legislative history, uncertainty and inaccessibility become sig-

nificant problems. The legislative history of Acts like the the Federal Water Power Act can be found, if at all, only in the largest legal libraries. Even there, after any considerable passage of time, the record is seldom a complete one. That is part of the reason why our system of laws has always depended on the principle that what Congress enacts is the law and that the miscellaneous recorded legislative materials that preceded enactment are to be consulted *only* on those rare occasions when there is some genuine facial ambiguity. *Camminetti v. U.S.* 242 U.S. 470, 485 (1917).

In this case the Commission and the Court of Appeals have kicked over all the traces. Now the interpretation of federal statutes is to depend on internal files and notes created by Administration employees or even private citizens. These are items having no reflection in the legislative record, created for undisclosed motives, kept or destroyed according to no known system, and buried deep in the recesses of the federal bureaucracy. This is apparently to happen regardless of the time elapsed, regardless of the lack of authentication of either the documents or the system under which they were kept, and regardless of their existence wholly outside what Congress itself saw and heard in enacting the Act.

Fresno County believes that the decision by the Court of Appeals to make the meaning of federal statutes depend on whatever private memoirs or notes may show up next, must be reviewed. Neither the Commission nor the Court of Appeals cited one iota of authority for this new system of statutory revision. Fresno County submits there is none.

CONCLUSION

Fresno County will not reiterate the arguments made by petitioners against the "great deference" shown by the Court of Appeals to the Commission's analysis. It would be hard to imagine a case less appropriate for abstention from judicial review. With that abstention by the Court of Appeals, this Court became the last hope for judicial review. On behalf of its own citizens, the millions of other consumers served by PGandE, and all those similarly situated throughout the United States, Fresno County respectfully requests this Court review this case and correct the errors it so clearly contains.

WHEREFORE, amicus curiae Fresno County respectfully prays that this Court grant the writ of certiorari and reverse the decision below.

Respectfully submitted,

FLOYD R. B. VIAU
COUNTY COUNSEL

JAMES B. WATERMAN
ASSISTANT COUNTY COUNSEL
and COUNSEL OF RECORD
JEFFREY L. KUHN
DEPUTY COUNTY COUNSEL
COUNTY OF FRESNO
2220 Tulare Street, Suite 121-P
Fresno, California 93721
Telephone: (209) 488-3479
Attorneys for Amicus Curiae County of Fresno